

Alabama Rules of Appellate Procedure

Rule 2.

Penalties for noncompliance with these rules; suspension of rules.

(a) Dismissal of appeal.

- (1) An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court.
- (2) An appeal may be dismissed: (A) if an appellant fails to file a brief within the time provided by Rule 31, or within the time as extended; (B) when an appellant takes a frivolous appeal as provided in Rule 38; (C) when the appellate court, on motion of a party or on its own motion, determines that there is an obvious failure to prosecute an appeal; or (D) when a party fails to comply substantially with these rules.

When an appellate court, on motion of a party, or on its own motion, shall determine that a party is obviously failing to prosecute the appeal (C), or has substantially failed to comply with these rules (D), the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency. If the party in default fails to correct the deficiency prior to submission, or within such time as the appellate court shall direct, the appellate court may dismiss the appeal. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official.

(b) Suspension of rules. In the interest of expediting decision, or for other good cause shown, an appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; provided, however, an appellate court may not extend the time for taking an appeal, as provided in Rule 4(a)(1); and the supreme court may not extend the time for filing a petition for certiorari to the courts of appeals as provided in Rule 39(b); provided, however, that the supreme court may extend the time for filing a petition for certiorari in a criminal case in which the death penalty was imposed as punishment.

(c) Striking of Petition for Certiorari. A petition for certiorari to the courts of appeals shall be stricken if the petition for certiorari was not timely filed to invoke the jurisdiction of the supreme court.

[Amended 5-4-81, eff. 5-18-81; Amended 6-2-81, eff. 7-15-81; Amended 11-19-96, eff. 1-1-97; Amended 9-20-2016, eff 1-1-2017.]

Committee Comments

The Alabama Rules of Appellate Procedure will be construed to assure the just, speedy and inexpensive determination of every appellate proceeding. Compliance with these rules is encouraged, because the rules are designed to ensure the just, speedy and inexpensive determination of every appellate proceeding, and should be followed, even in their technical requirements.

The responsibility for complying with the rules still rests principally with the attorneys, and the fact that this rule substantially changes the penalty for noncompliance with the appellate rules should not encourage attorneys to engage in careless appellate practice. In fact, penalties for noncompliance may be imposed.

If an appeal is not taken within the time as specified in Rule 4(a)(1), the appellate court shall dismiss it.

If the appellant fails to file his briefs on time the appeal may be dismissed. Rule 31.

Frivolous appeals may be dismissed. Rule 38.

It is intended that deficiencies relating to such things as the size of paper, service of notices on opposing parties, certifications and the like are not sufficient grounds for dismissal of an appeal.

This rule is not intended as a substitute for specific provisions as to time for filing various papers, and the like, since specific penalties for those items are provided in the rules governing the filing of briefs, appendices, notices of appeal and the like.

Decisions such as *Coca Cola Bottling Co. v. Hammac*, 48 Ala.App. 60, 261 So.2d 893, and *Metzger Bros. v. Friedman*, 288 Ala. 386, 261 So.2d 398, under former appellate practice shall not be followed. Counsel are also directed to the resolution of the Bar in 29 Alabama Lawyer 388 (October 1968) for the kind of technical dismissals of review sought to be avoided by this rule.

This rule is intended in its scope to apply to all applications for extraordinary remedies as well as appeals. It is further intended to include delinquencies or failures of court reporters, clerks and registers. It is intended that all attorneys, not merely the attorney for the party in default, should be apprised of the procedural delinquency. Under this rule, the burden is on the attorney for the party in default to correct the deficiency or see that it is corrected by the appropriate official.

The primary purpose of subdivision (b) is to make clear the power of the appellate court to expedite the determination of cases of pressing concern to the public or to the litigants by prescribing procedures and time schedules other than those provided by the rules. The rule prohibits an appellate court from extending the time within which to take an appeal. This rule contemplates that an appellate court may relieve a litigant of the consequences of default where manifest injustice would otherwise result. See Rule 48 for treatment of the sanction of contempt of court.

In criminal cases, because of constitutional requirements and with due regard for the fundamental rights of a defendant, the interplay between available penalties for noncompliance with the rules, on the one hand, and suspension of the rules, on the other hand, is left to the sound discretion of the Court of Criminal Appeals.

Court Comment to Amendment to Rule 2(a)(2)
Effective January 1, 1997

The amendment to Rule 2(a)(2) removes gender specific pronouns.

Note from the reporter of decisions: The order amending Rule 2(c) and Rule 3(c) and adopting Rule 28A and Rule 28B, Ala. R. App. P., and the committee comments, including the comments to Rule 25, effective January 1, 2017, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.